

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 412

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Cynthia Nava

AN ACT

RELATING TO TAXATION; EXPANDING THE JOB CLASSIFICATIONS OF  
NONRESIDENT TAXPAYERS WHO MAY ALLOCATE INCOME EARNED IN NEW  
MEXICO FROM A BUSINESS OR FEDERAL LAW ENFORCEMENT AGENCY  
LOCATED WITHIN TWENTY MILES OF AN INTERNATIONAL BORDER TO THEIR  
STATE OF RESIDENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-11 NMSA 1978 (being Laws 1965,  
Chapter 202, Section 9, as amended) is amended to read:

"7-2-11. TAX CREDIT--INCOME ALLOCATION AND  
APPORTIONMENT.--

A. Net income of any individual having income that  
is taxable both within and without this state shall be  
apportioned and allocated as follows:

(1) during the first taxable year in which an

.171535.2

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 individual incurs tax liability as a resident, only income  
2 earned on or after the date the individual became a resident  
3 and, in addition, income earned in New Mexico while a  
4 nonresident of New Mexico shall be allocated to New Mexico;

5 (2) except as provided otherwise in Paragraph  
6 (1) of this subsection, income other than compensation or  
7 gambling winnings shall be allocated and apportioned as  
8 provided in the Uniform Division of Income for Tax Purposes  
9 Act, but if the income is not allocated or apportioned by that  
10 act, then it may be allocated or apportioned in accordance with  
11 instructions, rulings or regulations of the secretary;

12 (3) except as provided otherwise in Paragraph  
13 (1) of this subsection, compensation and gambling winnings of a  
14 resident taxpayer shall be allocated to this state;

15 (4) compensation of a nonresident taxpayer  
16 shall be allocated to this state to the extent that such  
17 compensation is for activities, labor or personal services  
18 within this state; provided:

19 (a) if the activities, labor or services  
20 are performed in this state for fifteen or fewer days during  
21 the taxpayer's taxable year, the compensation may be allocated  
22 to the taxpayer's state of residence; ~~and~~

23 (b) if the compensation is for  
24 activities, labor or services performed for a business in ~~the~~  
25 a manufacturing, distribution or logistics industry in New

.171535.2

underscoring material = new  
[bracketed material] = delete

1 Mexico that is located within twenty miles of an international  
2 border, that ~~[has]~~ hires a minimum of five full-time employees  
3 who are New Mexico residents ~~[is not receiving development~~  
4 ~~training funds under Section 21-19-7 NMSA 1978]~~ within two  
5 years of establishing its operation and that meets the  
6 qualifications of one of Items 1) through 4) of this  
7 subparagraph, the compensation may be allocated to the  
8 taxpayer's state of residence. The qualifications are: 1) the  
9 business had no payroll in New Mexico during the previous  
10 calendar year; 2) the business had a payroll in New Mexico for  
11 less than the entire previous calendar year, and the first  
12 payroll of the new calendar year includes payments to New  
13 Mexico residents exceeding the highest monthly payroll for such  
14 residents in the previous calendar year; 3) the business had a  
15 payroll in New Mexico for the entire previous calendar year,  
16 and the first payroll of the new calendar year includes  
17 payments to New Mexico residents exceeding by at least ten  
18 percent both the payroll for all employees in January 2001 and  
19 the payroll for New Mexico residents twelve months prior to the  
20 commencement of the new calendar year; or 4) the business had a  
21 payroll in New Mexico for the entire previous calendar year,  
22 but had no payroll in New Mexico within one year prior to  
23 January 1, 2001, and the first payroll of the new calendar year  
24 includes payments to New Mexico residents exceeding by at least  
25 ten percent the payroll for such residents twelve months

.171535.2

underscored material = new  
[bracketed material] = delete

1 earlier; and

2 (c) if the compensation is for activities,  
3 labor or services performed by the taxpayer as an employee of a  
4 federal law enforcement agency that maintains a facility within  
5 twenty miles of an international border, and the taxpayer is  
6 based at or works from that facility, the compensation may be  
7 allocated to the taxpayer's state of residence;

8 (5) gambling winnings of a nonresident shall be  
9 allocated to this state if the gambling winnings arose from a  
10 source within this state; and

11 (6) other deductions and exemptions allowable in  
12 computing net income and not specifically allocated in the  
13 Uniform Division of Income for Tax Purposes Act shall be  
14 equitably allocated or apportioned in accordance with  
15 instructions, rulings or regulations of the secretary.

16 B. For the purposes of this section:

17 (1) "business" means that portion of a  
18 business entity that is located within twenty miles of an  
19 international border;

20 (2) "distribution" means the process of  
21 transporting raw materials, components or finished products;

22 (3) "logistics" means services, including  
23 packing, transportation, document processing and services  
24 needed to distribute products;

25 (4) "manufacturing" means combining or

.171535.2

1 processing components or materials to increase their value for  
2 sale in the ordinary course of business. "Manufacturing" does  
3 not include construction, farming, the processing of natural  
4 resources and hydrocarbons or power generation; and

5 (5) "non-New Mexico percentage" means the  
6 percentage determined by dividing the difference between the  
7 taxpayer's net income and the sum of the amounts allocated or  
8 apportioned to New Mexico by that net income.

9 C. A taxpayer may claim a credit in an amount equal  
10 to the amount of tax determined to be due under Section 7-2-7  
11 or 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico  
12 percentage."

13 Section 2. APPLICABILITY.--The provisions of this act  
14 apply to taxable years beginning on or after January 1, 2009.